HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.5526 of 2005.

Date of decision : 10.10.2006.

Ram Kumar .....Petitioner
versus
Kamlesh Kumari .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Puneet Jindal, Advocate for the petitioner.

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order passed by the learned Rent Controller dated 13.9.2005, whereby the landlord was permitted to amend the plaint so as to correct the description of the tenanted premised.

The land lord Surinder Kumar sought ejectment of the tenant being specific landlord, under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act). The tenanted premises was described in the site plan in red colour as consisting of one room. The tenant filed written statement and took a stand in the written statement that he is in occupation of two rooms and a kitchen as shown yellow in the site plan. Though the landlord adduced the evidence to prove that tenanted premises are the one which are shown red in the site plan, but by virtue of amendment sought on 29.8.2005, it was pointed out that due to inadvertence the premises could not be described correctly and landlord wants to rectify the mistake. It is pointed out that respondent has also filed

site plan Exhibit R-4 and, therefore, the petitioner be permitted to amend the plaint. The said application has been allowed by the learned Rent Controller.

Learned counsel for the petitioner has vehemently argued that the petitioner has sought ejectment as a specific landlord. Such right can be availed by the landlord only within one year of his retirement. Since the petitioner retired on 31.3.1996, therefore, the amendment sought by the petitioner vide application dated 29.8.2005 is beyond the period of limitation during which the land lord was entitled to seek eviction in summary manner. It was also pointed out that the landlord insisted that the tenanted premises as shown red in the site plan not only in the plaint, but in the rejoinder as well in evidence. Therefore, the amendment sought is malafide and against the evidence already led by the landlord. It is further argued that the amendment allowed at the stage in fact is to avoid perjury and also lead to de-novo trial.

However, I am unable to agree with the submission made by learned counsel for the petitioner. Since landlord sought the ejectment by filing a petition under Section 13-A of the Act within one year of his retirement, therefore, the correction in description of the premises would not amount to filing of the petition after the period prescribed to seek eviction of the tenant in terms of Section 13-A of the Act. Therefore, the amendment sought on 29.8.2005 which is to correct inadvertent mistake in the description of the tenanted premises cannot be said to be beyond the period of limitation to seek ejectment of the tenant. The argument that the landlord has acted with malafide and is to avoid perjury is again de-void of merit. Though earlier the stand of the landlord was that demised premises as

shown is red in the site plan, but it is open to the landlord that tenanted premises is in fact different, which is in fact as per the stand of the tenant in the written statement.

Therefore, I do not find that such amendment can be said to be malafide or an attempt to avoid the allegation of perjury. The argument that it will amount to de-novo trial is again unwarranted. Even if some fresh evidence is required, the same should be permitted to be led as only mistake is to be corrected. In fact, it is the landlord who has sought ejectment almost a decade back being specified landlord and delay, if any, on account of de-novo trial will effect his rights also.

In view of the above, I do not find any illegality or irregularity in the order passed by the learned Rent Controller, which may warrant interference by this Court in its revisional jurisdiction.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

October 10, 2006.

**mohinder*